ALEXANDER L. STEVAS
Office - Supreme Court, U.S.
FILED
JUL 13 1982
ALEXANDER L. STEVAS,
CLERK

No. 82-66

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

STANLEY C. MAZALESKI,

Petitioner,

v.

JON R. MAY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

STANLEY C. MAZALESKI, *PRO SE*
3931 Sugarloaf Drive
Monrovia, Maryland 21770
(301) 831-9424

Washington, D.C. • THIEL PRESS • (202) 638-4521

QUESTIONS PRESENTED

1. Is it proper for the court to rule in favor of summary judgment when material facts and law are in serious dispute?

2. Whether a supervisor was acting within the parameters of his official duties when he made a statement to the press concerning a former subordinate who was discharged from federal employment approximately four years earlier is a central issue. Did the malicious and untrue statements by the supervisor have absolute immunity as asserted by the government through *Barr v. Matteo* (1959)?

3. Because of these malicious and untrue statements then sheltered under the umbrella of absolute immunity through *Barr v. Matteo* (1959), petitioner has suffered unfairly loss of property and liberty rights, with an unwarranted invasion of privacy, guaranteed Fourth Amendment right violated and loss of free speech First Amendment guaranteed right. How do such violations comport with fair play and Constitutional rights guarantees?

4. The very recent U.S. Supreme Court rulings in *Nixon v. Fitzgerald* (No. 79-1738, decided June 24, 1982) and *Harlow v. Fitzgerald* (No. 80-945, decided June 24, 1982), giving absolute immunity only to the U.S. President from damages liability predicated on his official acts, with the President's absolute immunity extending to all acts within the "outer perimeter" of his office, with lesser officials given only qualified immunity, have superseded as the standard, instead of *Barr v. Matteo* (1959). What significant effect does this new and most compelling standard of absolute immunity for the President *only*, have on reversing the February 3, 1982

opinion of the U.S. Court of Appeals for the Fourth Circuit affirming the lower District Court's summary judgment in favor of Respondent and the government, and violating Petitioner's Constitutional guaranteed free speech and right to privacy, and compensatory and punitive damages denied based on the *Barr v. Matteo* (1959) standard?

5. What effect does the new U.S. Supreme Court rulings on absolute immunity, for the President only, have on the millions of federal workers, past, present, and future, who under the current ruling by the U.S. Court of Appeals for the Fourth Circuit have set a dangerous precedent to First and Fourth Amendment rights which under their February 3, 1982 Opinion not only denies these guaranteed Constitutional rights, but forecloses liberty and property rights also guaranteed under the U.S. Constitution?

6. In the very recent U.S. Supreme Court ruling in *United States Department of State et al. v. Washington Post* (No. 81-535, decided May 17, 1982) the State Department's denial of the request should have been sustained upon a showing that release of the information would constitute a clearly unwarranted invasion of personal privacy, as the similar situation in case at bar. How does this comport with the violation of right to privacy experienced by petitioner, and also millions of other federal workers in a similar situation? Does this comport with equitable law?

7. Were citizen/Petitioner's state rights violated when the government removed the case at bar from the State judicial system, and put in under *Barr v. Matteo* (1959) in the Federal judicial system?

8. Did the Court of Appeals for the Fourth Circuit adjudicate an extremely dangerous precedent setting bad

law, directly violating every federal worker's free speech and right to privacy, Constitutionally guaranteed rights?

9. Petitioner seeks a *Bivens* remedy for punitive and compensatory damages, for redress and to be made "whole again." Do the new U.S. Supreme Court rulings cited above allow Petitioner these damages resulting from slander and libel, and allow full free speech First Amendment, and privacy Fourth Amendment guaranteed Constitutional rights for the millions of other federal employees also?

10. There was no written Order on April 14, 1982 denying Petitioner's Suggestion for Rehearing En Banc. Was there any lack of judicial due process and equal protection under the law by the Court?

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

STANLEY C. MAZALESKI,

Petitioner,

v.

JON R. MAY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioner respectfully requests that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Fourth Circuit entered in this proceeding on February 3, 1982.

OPINION BELOW

Of primary importance in reference to the Opinion is the question posed in the letter by Peggy L. McCulloch, Senior Deputy Clerk to Elizabeth Trimble, Esq., dated June 8, 1981, and reproduced here as Appendix A.

The opinion of the Court of Appeals for the Fourth Circuit has not been reported, is listed as "Unpublished", and is reproduced as Appendix B. The Court of Appeals for the Fourth Circuit granted a Motion for Extension of Time Under Extraordinary Conditions to File Petition for Rehearing and Suggestion for Rehearing En Banc, on February 13, 1982, and is reproduced here as Appendix C.

On February 22, 1982 Petitioner was notified by letter from Chief Deputy Clerk (Mr.) Carol R. Lemon that an extension was granted to be in the hands of the Clerk on March 14, 1982, reproduced as Appendix D, with enclosed Order That This Motion Is Granted (for the Court by direction of William K. Slate, II, Clerk), filed February 22, 1982, and reproduced as Appendix E.

On March 12, 1982 Petitioner hand delivered his Petition for Rehearing and Suggestion for Rehearing En Banc, reproduced as Appendix F. On April 14, 1982 an Order, in that "It is adjudged and ordered that the petition for rehearing is denied. . . ." (for the Court by William K. Slate, II, Clerk), and is reproduced as Appendix G.

On May 10, 1982 Petitioner wrote Mr. Slate, Clerk, about Petitioner's concern that no Order was issued *denying* Petitioner's Suggestion for Rehearing En Banc. Petitioner's May 10, 1982 letter to William K. Slate, II, Clerk, is reproduced as Appendix H. Mr. Scott A. Richie, Deputy Clerk, responded to Petitioner's May 10, 1982 letter instead of Mr. Slate. This letter is reproduced as Appendix I.

Still not getting an answer that may be correct on *no Order* affirming or denying Petitioner's Suggestion for

Rehearing En Banc, Petitioner again wrote Mr. William K. Slate, II, Clerk, that there may be a lack of judicial Due Process and Equal Protection for Petitioner in adjudicating this case in regard to *no Order* denying Petitioner's Suggestion for Rehearing En Banc. Petitioner's July 6, 1982 letter on this matter addressed to Mr. Slate, Clerk, is reproduced as Appendix J.

JURISDICTION

The petition for rehearing was denied April 14, 1982 and Suggestion for Rehearing was allegedly denied but *no Order* specifically showed this on April 14, 1982. Petitioner moved forward in this situation, and this petition for writ of certiorari was filed within 90 days of the date of denial of the petition. Jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

First Amendment to the United States Constitution:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for redress of grievances.

Fourth Amendment to the United States Constitution:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause,

supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fifth Amendment to the United States Constitution:

". . . nor be deprived of life, liberty, or property, without due process of law. . . ."

Sixth Amendment to the United States Constitution:

". . . and to have the assistance of counsel for his defense. . . ."

Eighth Amendment to the United States Constitution:

". . . nor cruel and unusual punishment. . . ."

Tenth Amendment to the United States Constitution:

The Powers not delegated to the United States by the Congress, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Fourteenth Amendment to the United States Constitution:

Section 1. All Persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which abridges the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

Title 5, United States Code *et seq.*

Title 18, United States Code *et seq.*

Privacy Act of 1974 and as amended

OSHA Act of 1970

Civil Rights Act of 1964

Civil Service Reform Act of 1978

STATEMENT OF THE CASE

The action arises out of a story printed in the *Washington Weekly*, a newspaper in general circulation in the area of the District of Columbia on February 27, 1979. The article was essentially about a four year struggle to get Constitutional protection, equal rights, for some 6,000 Commissioned Officers, United States Public Health Service, and directly involved was a Class Action against Secretary Joseph A. Califano before the U.S. Court of Appeals for the District of Columbia. The news story shows President and Mrs. Carter's indifference to human rights for scientists and citizens who dare speak out against waste and corruption in government. The *Washington Weekly* story was very embarrassing to the President, his wife, the White House, and members of Congress. Job reprisal at EPA, Petitioner's place of employment, was indicated and, immediately thereafter, the electronic surveillance started on Petitioner as a result of petitioner's allegations that he had been fired from his job at the National Institute for Occupational Safety and Health (NIOSH) in retaliation for having publicly criticized NIOSH officials, and having publicly charged his former supervisor, the respondent in this case, Dr. Jon R. May, with official misconduct. The article quoted the respondent as replying to Dr. Mazaleski's allegations by asserting as follows: "The whole thing is riduculous. The issues he raised against NIOSH

have been totally phony. I saw his performance from December, '74 until his termination in March '75. He was a very lazy, non-productive individual. I felt it was my responsibility to the taxpayers and factory workers to press charges for dismissal." Petitioner had already won a First Amendment Free Speech claim against the Public Health Service, DHEW, in *Mazaleski v. Truesdell et al.*, 75-1817, U.S. Court of Appeals for the District of Columbia, with Jon May also a defendant. Petitioner is searching for a lawyer, and is waiting to go to trial "de novo" on the free speech claim against NIOSH.

The *Washington Weekly* article was written by one Pamela Lowe, a paid reporter, and the statement of Dr. May was allegedly made to her over the telephone approximately one week before the article appeared in print.

The Petitioner had been involuntarily removed, as a Commissioned Officer, from his employment for "blowing the whistle" on NIOSH waste and mismanagement concerning carcinogenic and other dangerous chemicals. Petitioner's case was heard by the Honorable Judge John J. Sirica, and Judge Sirica ruled in favor of summary judgment for the government, which included defendant/respondent Dr. May. This was done on July 10, 1975, but Judge Sirica's Opinion was overturned April 26, 1977 by the U.S. Court of Appeals for the District of Columbia Circuit in 75-1817 on a free speech, First Amendment Claim, and Administrative Error by the Government. That termination will now be contested in the Federal courts accordingly. Petitioner has lost many lawyers along the way in two separate litigations, some corrupt union lawyers, one being a former General Counsel and Assistant Attorney General in the Johnson Administration. Petitioner, however, hard the struggle

has been, and how long the road to find justice has been, has never waived his right to an attorney to litigate his cases on Constitutional law.

In continuation, the respondent has asserted that the doctrine of official immunity provides him absolute immunity from common law action for defamation of character, with malice, arising out of his performance as a Federal official acting allegedly within the scope of his official duties. The respondent's motion for summary judgment on this issue was denied earlier because of the existence of a dispute over the scope of the defendant's official duties.

In the very recent U.S. Supreme Court decisions of *Nixon v. Fitzgerald* (No. 79-1738, decided June 24, 1982) decimates respondent's and the government's reliance on *Barr v. Matteo*, 79 S. Ct. 1335 (1959).

The U.S. Supreme Court recently held in *Nixon v. Fitzgerald* (No. 79-1738, decided June 24, 1982) that ". . . The President's absolute immunity extends to all acts within the 'outer perimeter' of his duties of his office. . . ." *Only* the *President* was given absolute immunity, *not lesser officials*, including respondent. Again, most recently, in *Harlow et al. v. Fitzgerald* (No. 80-945, decided June 24, 1982) the U.S. Supreme Court held that:

> 1. Government officials whose special functions or constitutional status requires complete protection from suits for damages—including certain officials of the Executive Branch, such as prosecutors and similar officials, see Butz v. Economou, 438 U.S. 478, and the President Nixon v. Fitzgerald, ante, p. ___ are entitled to the defense of absolute immunity. However, executive officials in general are usually entitled to only qualified or good-faith

immunity. The recognition of a qualified immunity defense for high executives reflects an attempt to balance competing values: not only the importance of a damages remedy to protect the rights of citizens, but also the need to protect officials who are required to exercise discretion and the related public interest in encouraging the vigorous exercise of official authority. Scheuer v. Rhodes, 416 U.S. 232. Federal officials seeking absolute immunity from personal liability for unconstitutional conduct must bear the burden of showing that public policy requires an exemption of that scope. Pp. 5–7.

2. Public policy does not require a blanket recognition of absolute immunity for Presidential aides. Cf. Butz, supra. Pp. 7–12.

(a) The rationale of Gravel v. United States, 408 U.S. 606—which held the speech and Debate Clause derivatively to the "legislative acts" of a Senator's aide that would have been privileged if performed by the Senator himself—does not mandate "derivative" absolute immunity for the President's chief aides. Under the "functional approach to immunity law, immunity protection extends no further than its justification warrants. Pp. 8–10.

(b) While absolute immunity might be justified for aides entrusted with discretionary authority in such sensitive areas as national security or foreign policy, a "special functions" rationale does not warrant a blanket recognition of absolute immunity for all Presidential aides in the performance of all their duties. To establish entitlement to absolute immunity, a Presidential aide first must show that the responsibilities of his office embrace a function so sensitive as to require a total shield from liability. He then must demonstrate that he was discharging the protected function when performing the act

for which liability is asserted. Under the record in this case, neither petitioner has made the requisite showing for absolute immunity. However, the possibility that petitioners, on remand, can satisfy the proper standards is not foreclosed. Pp. 11-12.

3. Petitioners are entitled to application of the qualified immunity standard that permits the defeat of insubstantial claims without resort to trial. PP. 13-20.

(a) The previously recognized "subjective" aspect of qualified or "good faith" immunity—whereby such immunity is not available if the official asserting the defense "took the action with the malicious intention to cause a deprivation of constitutional rights or other injury," Wood v. Strickland, 420 U.S. 308, 322—frequently has proved incompatible with the principle that insubstantial claims should not proceed to trial. Henceforth, government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate "clearly established" statutory or constitutional rights of which a reasonable person would have known. Pp. 14-19.

(b) The case is remanded for the District Court's reconsideration of the question whether respondent's pretrial showings were insufficient to withstand petitioner's motion for summary judgment. Pp. 19-20. Vacated and remanded. Powell, J., delivered the opinion of the Court, in which Brennant, White, Marshall, Blackmun, Rehnquist, Stevens, and O'Connor, JJ., joined. Brennan, J., filed a concurring opinion, in which Marshall and Blackmun, JJ., joined. Brennan, White, Marshall, and Blackmun, JJ., filed a separate concurring statement. Rehnquist, J., filed a con-

curring opinion. Burger, C.J., filed a dissenting opinion.

In regard to privacy, Fourth Amendment rights in the very recent judgment by the Supreme Court of the United States in the *U.S. Department of State et al. v. Washington Post Co.* (No. 81-535, decided May 17, 1982), that Court held:

> The citizenship information sought by respondent satisfies the "similar files" requirement of Exemption 6, and hence the State Department's denial of the request should have been sustained upon a showing that release of the information would constitute a clearly unwarranted invasion of personal privacy. Although Exemption 6's language sheds little light on what Congress meant by "similar files," the legislative history indicates that Congress did not mean to limit Exemption 6 to a narrow class of files containing only a discrete kind of personal information, but that "similar files" was to have a broad, rather than a narrow, meaning. Exemption 6's protection is not determined merely by the nature of the file containing the requested information, and its protection is not lost merely because an agency stores information about an individual in records other than "personnel" or "medical" files. Pp. 3-8, ___ U.S. App. D.C. ___, 647 F.2d 197, reversed and remanded. Rehnquist, J., delivered the opinion of the Court, in which Burger, C.J., and Brennan, White, Marshall, Blackmun, Powell, and Stevens, JJ., joined. O'Connor, J., concurred in the judgment.

Petitioner's review of the most recent U.S. Supreme Court decisions regarding absolute immunity only for the President, and "good-faith" qualified immunity, along with their recent decision to protect the privacy of personnel, medical and other files kept and maintained

by an agency to not allow a clear unwarranted invasion of personal privacy under Exemption 6 of the Freedom of Information Act. There is a close analogy to these cases and petitioner's case at bar in material fact, law, and merits, which if the three U.S. Supreme Court cases herein cited above, with their reasoning, conclusions, and judgments as rendered recently, projects petitioner's claims to Constitutional guarantees of free speech, right to privacy, due process, equal protection in judicial adjudication, freedom from duress, cruel and unusual punishment, violation of citizens' states rights, deprivation of liberty and property rights due to respondent's malicious and defamatory statements made to a *Washington Weekly* reporter in February 1979 constituting slander, and malicious and defamatory statements in the *Washington Weekly* news story constituting libel about petitioner's speaking out as a scientist, not working with NIOSH, not under the supervision of respondent for some four years, and speaking out on public health, and related litigation concerning the putlic good. Petitioner had the Constitutional guarantees cited, respondent made malicious statements as prima facia evidence in the record in case at bar shows with a preponderance of material facts and merit supporting petitioner's claims for compensatory and punitive damages. Respondent was clearly not acting in the public good as the record shows, improperly had the government move this case from a State judicial system to a Federal, improperly shield himself behind *Barr v. Matteo* (1959) for illicit purposes, used government funds, attorneys and the power of the U.S. Attorney's Office for illegitimate purposes, to slander, libel and defame petitioner professionally and in the community and ruin the petitioner's good family name and reputation as physicians, scientists, combat veterans, dentists, school teachers and good citizens and

public servants, well knowing that petitioner did not have the funds or assistance legally that respondent had, all at the public and taxpayer's expense. Petitioner is a well known "whistleblower" and Constitutional reformer, with concern only for the public good, honest government, oath to the Constitution and God. Respondent continually used the "Big Lie Technique"; that is, to tell a lie long enough, that it will be belived, and ultimately destroy the prey, petitioner.

Respondent Jon R. May did not have the public good at heart, and was only trying to save himself since he is a defendant in *Mazaleski v. Truesdell et al.*, and has committed perjury in that case and this case at bar. The government, respondent, and the U.S. Court of Appeals for the Fourth Circuit have failed to answer the most important question as raised in the June 8, 1981 letter from William K. Slate, II, Clerk, by Peggy L. McCulloch, Senior Deputy Clerk to Elizabeth Trimble, Assistant U.S. Attorney, reproduced as Appendix A herein, to wit:

> Whether a supervisor was acting within the parameters of his official duties when he made a statement to the press concerning a former subordinate who was discharged from federal employment approximately four years earlier.

Petitioner answered this question in Appellant's Reply to Appellee's Memorandum of Law of June 26, 1981. Petitioner didn't work for respondent for approximately four years, was in another agency, was legitimately pursuing litigation, using free speech as a scientist for the public good and interest. Petitioner has been directly involved in initiating a General Accoutning Office (GAO) investigation at NIOSH and the Department of Labor's Occupational Safety and Health Administration (OSHA), with significant waste, mismanagement reported in the

resulting GAO report, May 10, 1977, HRD-77-71, which is a permanent part of this Court's records. Only the truth was spoken by petitioner throughout these many years of struggle and sorrow. The public interest and good is not being served and the record before the lower courts shows document after document of prima facia evidence on NIOSH and OSHA waste, mismanagement, and cover-up. In the Judgment of February 3, 1982, that Court ignored the evidence before them, did not answer the most important question, whether a former supervisor of some four years earlier could hound, defame, use character assassination with malice in the press, to cover up for the very waste, mismanagement, he, and a close-knit group, mainly Commissioned Officers, Public Health Service, were directly responsible for, all at the detriment of the public good and interest. The Judgment of February 3, 1982 (Appendix B) stamped "Unpublished" cannot stand, since respondent, in light of the *Nixon v. Fitzgerald* U.S. Supreme Court Judgment, June 24, 1982, giving absolute immunity only to the President. The U.S. Court of Appeals gave absolute immunity to respondent, because of his malice, and violation of petitioner's guaranteed free speech and privacy rights. The court acted in error, and should be overridden in their Feburary 3, 1982 judgment, not only because of the most recent U.S. Supreme Court rulings on absolute immunity, invasion of privacy, but also because it would be ludicrous to allow millions of federal employees to be hounded, have their Constitutional rights violated, blackballed by former supervisors, years later, with a severe loss of liberty and property rights by direct and illegal abuse of power, personal grudges, insecurities, jealousies, and what have you. Their February 3, 1982 Opinion is bad law and precedence setting

of a very dangerous nature which erodes the very base of our judicial system and Constitution.

REASONS FOR GRANTING THE WRIT

The decision of the Court of Appeals for the Fourth Circuit strikes irreparably at the Constitutional guarantees of free speech, privacy, duress, states rights, due process and equal protection in the judicial arena and the Opinion of February 3, 1982, if left standing, could ultimately destroy the Federal employment system, and seriously undermine the workings of the government, the public good and interest, and ultimately erode the U.S. Constitution beyond belief, and if not put a chill throughout government service, not for the good of the country, and actually destroy our Federal service. Petitioner feels that federal service will be subverted beyond saving, with great harm to the public interest and good. Petitioner believes that the most recent Supreme Court rulings on invasion of privacy, and absolute immunity only for the President is the new and compelling standard, that overturns *Barr v. Matteo* (1959) absolute immunity so improperly awarded respondent.

CONCLUSIONS

This Court should grant certiorari based on new law adjudicated in *Nixon v. Fitzgerald* (1982), *Harlow et al. v. Fitzgerald* (1982), and *U.S. Department of State et al. v. Washington Post Co.* (1982) by the U.S. Supreme Court in May and June 1982, that petitioner has presented a very rational basis in fact and law to overturn the February 3, 1982 Opinion by the U.S. Court of Appeals for the Fourth Circuit, that petitioner and millions of federal employees will suffer irreparably,

that Constitutionally guaranteed rights, especially free speech, privacy, liberty and property rights are lost, and that that Opinion of February 3, 1982 is Constitutionally unsound, unfair, and illegal, and to overturn it, and award petitioner, seeking a *Bivens* remedy, the two million dollars compensatory and punitive damages because of the extensive malice, and irreparable harm done to petitioner and his family, while petitioner tried to serve the public good and live up to his oath to God and Country, and the U.S. Constitution.

Any procedural errors that may have been made by petitioner *pro se* are respectfully asked to be waived, while appellant represents his Constitutional and states rights *pro se*, a condition beyond his control.

Respectfully,

/s/ Stanley C. MAZALESKI, *PRO SE*
3931 Sugarloaf Drive
Monrovia, Maryland 21770
(301) 831-9424

CERTIFICATE OF SERVICE AND NOTICE OF SERVICE

I, Stanley C. Mazaleski, Ph.D., certify that the original and forty copies of this Petition for Writ of Certiorari, dated July 13, 1982 and notarized July 13, 1982, were hand delivered to the Clerk, July 13, 1982, United States Supreme Court, Washington, D.C. 20543, and three copies mailed July 13, 1982, first class mail, postage prepaid, to the Solicitor General, Department of Justice, Washington, D.C. 20530.

/s/ STANLEY C. MAZALESKI, *PRO SE*

APPENDIX A

Clerk's Office
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
United States Courthouse
Tenth & Main Streets
Richmond, Virginia 23219

June 8, 1981

Elizabeth H. Trimble, Esq.
U.S. Courthouse—8th Fl.
101 W. Lombard Street
Baltimore, MD 21201

Re: 80-1843, *Stanley C. Mazaleski vs. Jon R. May*

Dear Ms. Trimble:

After reviewing the record and appellant's brief, the court believes the case merits a response by the government. We ask that the appellee file a memorandum of law addressing, along with other issues presented, the following issue:

> Whether a supervisor was acting within the parameters of his official duties when he made a statement to the press concerning a former subordinate who was discharged from federal employment approximately four years earlier.

The memoranda of law, with three copies, should be served and filed by not later than *June 29, 1981.* Please mark the response to my attention.

Sincerely yours,

WILLIAM K. SLATE, II

By: /s/ Peggy L. McCulloch
Senior Deputy Clerk

PLM:fls

cc: Mr. Stanley C. Mazaleski
583 Sugarloaf Drive
Monrovia, Md. 21770

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

(Unpublished)

No. 80-1843

STANLEY C. MAZALESKI,
Appellant,

v.

JON R. MAY,
Appellee.

APPEAL FROM THE
UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND, AT BALTIMORE
Joseph H. Young, District Judge

Submitted: December 14, 1981
Decided: February 3, 1982

Before WIDENER, PHILLIPS, and SPROUSE, Circuit Judges

(Stanley C. Mazaleski, Appellant Pro Se. Elizabeth H. Trimble, Assistant United States Attorney, for the Appellee.)

PER CURIAM:

Dr. Stanley Mazaleski appeals the decision of the district court granting absolute immunity to the defend-

ant Dr. Jon May for charges that he libeled and slandered Dr. Mazaleski. We believe that the record adequately supports the court's determination that May acted within the outer perimeter of his duties and we therefore affirm the judgment in favor of Dr. May.

The genesis of this action was the involuntary termination of Dr. Mazaleski in July, 1975 from his position with the National Institute for Occupational Safety and Health (NIOSH). The dismissal generated a significant amount of public discussion, and early in 1979 a student intern for the *Washington Weekly* interviewed both Dr. Mazaleski and Dr. May concerning the termination. Subsequently, an article appeared in the February 27, 1979, edition of the *Washington Weekly* which contained allegedly libelous comments attributed to Dr. May.

Dr. Mazaleski retained counsel and instituted this suit against Dr. May in a Maryland state court. Count I of the complaint alleged that Dr. May's comments slandered Dr. Mazaleski, and Count II alleged that the same comments libeled Dr. Mazaleski since Dr. May knew the comments would appear in print. Dr. May, represented by an attorney for the United States, removed the case to the federal district court for the district of Maryland. 28 U.S.C. §§ 1442, 2679. After trial on October 29, 1980, the court issued its oral opinion finding that Dr. May acted within the outer perimeter of his duties when he spoke with the student intern. The court therefore found Dr. May entitled to the absolute immunity of *Barr v. Matteo*, 360 U.S. 564 (1959). We agree.

Both Dr. May and the current Director of NIOSH testified that Dr. May acted within the scope of his duties as Chief of the Criteria Development Branch when he spoke to a member of the press. Although Dr. Mazaleski attempted to show that only personnel officers with

NIOSH have authority to communicate with members of the press, we believe the district court was fully justified in accepting the testimony that Dr. May had authority to speak with the student intern. We believe that Dr. May is entitled to absolute immunity. *George v. Kay*, 632 F.2d 1103 (4th Cir. 1980), *cert. denied*, 101 S. Ct. 1738 (1981).

In his pro se brief on appeal, Dr. Mazaleski attempts to add a constitutional gloss to his claim by asserting violations of various constitutional amendments. This effort of course is directed toward persuading us that Dr. May is entitled only to the qualified immunity of *Butz v. Economou*, 438 U.S. 478 (1978). The action was not litigated in this posture below, however, and we decline to consider for the first time on appeal whether Dr. May's statements violated any of Dr. Mazaleski's constitutional guarantees.

The record and other materials before this Court indicate that oral argument would not significantly aid the decisional process. We therefore dispense with oral argument and affirm the judgment of the district court.

AFFIRMED

APPENDIX C

IN THE
UNITED STATES COURT OF APPEALS

Case No. 80-1843
(CA-Y-80-811)

STANLEY C. MAZALESKI,
Appellant,

v.

JOHN R. MAY,
Appellee.

MOTION FOR EXTENSION OF TIME UNDER EXTRAORDINARY CONDITIONS TO FILE PETITION FOR REHEARING AND SUGGESTION FOR REHEARING *EN BANC*

On February 12, 1982 appellant, hospitalized, called the Clerk's office; Mrs. Neal responded, was asked instructions for an extension of time under extraordinary conditions to file a Petition for Rehearing and Suggestion for Rehearing *En Banc* since appellant was in the hospital all week, does not know how many more weeks for certain he will be there, and is unable to prepare and file in a timely manner said Petitioner. A handwritten Motion was approved.

Under these extraordinary conditions, beyond appellant's control, appellant respectfully requests an extension of time to file said Petition to March 14, 1982.

Appellant cannot defend his constitutional and civil rights under these conditions, feels this Court erred in ruling February 3, 1982 in favor of appellee and the government, and asks that this court grant this extension.

Any procedural errors that may have been made are respectfully asked to be waived.

Respectfully submitted,

/s/ Stanley C. Mazaleski
Pro Se
583 Sugarloaf Drive
Monrovia, Maryland 21770
(301) 831-9424

February 13, 1982

CERTIFICATE OF SERVICE AND NOTICE OF SERVICE

I, Stanley C. Mazaleski, certify that a copy of the foregoing Motion for Extension of Time under Extraordinary Conditions to file a Petition for Rehearing and Suggestion for Rehearing *En Banc* was sent via first class mail, postage prepaid, on this day of our Lord, Saturday, February 13, 1982, to Elizabeth H. Trimble, Esq., Assistant U.S. Attorney, Dept. of Justice, U.S. Courthouse—8th Floor, 101 W. Lombard Street, Baltimore, Maryland 21001.

/s/ Stanley C. Mazaleski
Pro Se
583 Sugarloaf Drive
Monrovia, Maryland 21770
(301) 831-9424

February 13, 1982

APPENDIX D

Clerk's Office
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
United States Courthouse
Tenth & Main Streets
Richmond, Virginia 23219-3599

February 22, 1982

Stanley C. Mazaleski
583 Sugarloaf Drive
Monrovia, MD 21770

Re: 80-1843, *Stanley C. Mazaleski v. Jon R. May*

Dear Mr. Mazaleski:

Enclosed is a copy of an order extending time for you to file your petition for rehearing and suggestion for rehearing en banc to *March 14, 1982.* The petition must be in the hands of the Clark on March 14, 1982 and *not* put in the mail on that date.

By copy of this letter, I am transmitting a copy to counsel for appellee.

Sincerely yours,

WILLIAM K. SLATE, II

By: /s/ (Mr.) Carol R. Lemon
Chief Deputy Clerk

CRL:gma
Enclosure

cc: Elizabeth H. Trimble, Esq.
U.S. Courthouse—8th Floor
101 W. Lombard Street
Baltimore, MD 21201

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 80-1843

[Filed: February 22, 1982]

STANLEY C. MAZALESKI,
Appellant,

v.

JON R. MAY,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, AT BALTIMORE
Joseph H. Young, District Judge

Upon consideration of the pro se motion of the appellant for an extension of time to file petition for rehearing and suggestion for rehearing en banc to March 14, 1982,

IT IS ORDERED THAT the motion is granted.

FOR THE COURT—BY DIRECTION

/s/ William K. Slate, II
Clerk

APPENDIX F

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 80-1843

[Filed: March 12, 1982]

STANLEY C. MAZALESKI,
Appellant,

v.

JON R. MAY,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

PETITION FOR REHEARING AND SUGGESTION FOR REHEARING *EN BANC*

STANLEY C. MAZALESKI, Ph.D.
Pro Se
583 Sugarloaf Drive
Monrovia, Maryland 21770
(301) 831-9424

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 80-1843

STANLEY C. MAZALESKI,
Appellant,

v.

JON R. MAY,
Appellee.

CONCISE STATEMENT OF ISSUE AND ITS IMPORTANCE

[1] Appellant *pro se* respectfully submits that this Court, in its two page *per curiam* Opinion dated Feb-

ruary 3, 1982 before Widener, Phillips, and Sprouse, Circuit Judges, with stamped notation Unpublished, misapprehended and misconstrued the material facts, failed to act on causes of action, improperly denied oral argument, reasons unsupportable, improperly failed to act on merits of case, and illegally decided case for political purposes of an illicit nature, ignored without basis appellant's Constitutional Guarantees, free speech, privacy, due process, right to an attorney, freedom from duress, cruel and unusual punishment, and equal protection. Appellant's Civil Rights are also denied. *Barr v. Matteo*, 79 S. Ct. 1335 (1959), is improperly applied as the standard in error, with irreparable damage to appellant and millions of past, present, and future federal workers denied their Constitutional Guarantees herein cited. *Barr v. Matteo* (1959) is in direct conflict with Appellant's Constitutional Guarantees and Civil Rights, conflicts with the Civil Rights Acts of 1871, 1964, the Privacy Act of 1974, the Civil Service Reform Act of 1978, *Butz v. Economou*, U.S. Supreme [2] Court, 438 U.S. 478 (1978), *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388, 29 L. Ed. 2d 619, 91 S. Ct. 1999 (1971), *Mazaleski v. Truesdell et al.*, CA 75-1817, D.C. Cir., 562 F.2d 701 (1977), *Mazaleski v. Califano, et al.*, CA 75-2251, D.C. Cir., March 26, 1979, *Mazaleski et al. v. Schweiker et al. (Harris et al.)*, 79-2470 USCA D.C. Cir. (unpublished, 1981), *Mazaleski et al. v. Schweiker et al.*, U.S. Supreme Court, October Term, 1981. Because this Court's Opinion affects appellant, and millions of past, present, and future federal employees and the denial of the basic Constitutional guarantees of free speech, privacy, due process, freedom from duress, cruel and unusual punishment, and equal protection, for liberty and property rights under the U.S. Constitution,

appellant submits that the issue of his Constitutional guarantees, especially free speech, right to privacy, due process, and equal protection in his present and future employment, liberty and property rights are of exceptional importance, and are being denied by this Court's Opinion if enacted into Law. All Federal employees, past, present, and future will be similarly, adversely, and irreparably affected for all time, by a grossly erroneous and highly Constitutionally infirm Opinion dated February 3, 1982 and decided by the U.S. Court of Appeals for the Fourth Circuit, *per curiam*, notation Unpublished, with no oral argument.

[3] Appellant, Stanley C. Mazaleski, *pro se*, pursuant to Rule 40, Federal Rules of Appellate Procedure, hereby petitions this Honorable Court to rehear the issues raised by this appeal and respectfully suggests that rehearing be granted *en banc*. As grounds therefor, Appellant Mazaleski respectfully submits that this Court in its two page *per curiam* Opinion of February 3, 1982 before Widener, Phillips, and Sprouse, Circuit Judges, with stamped notation of Unpublished on said Opinion, misapprehended and misconstrued the material facts and law, deciding in favor of appellee and the government not on the Merits, but on what is deemed illicit political purposes, to ignore appellant's Constitutional and Civil rights guarantees, to prevent investigation and prosecution of appellee and government witness for perjury, obstruction of justice, and conspiracy perpetrated by them under oath, at trial, before Judge Joseph H. Young, U.S. District Court for Maryland, October 29, 1980; and to prevent an investigation, grand jury inquiry into perjury and obstruction of justice in 75-1817 USCA D.C. Ct. 1977, USCA D.C. Ct. 75-2251 (Califano), 79-2470 USCA D.C. Ct. (Sec. DHEW Harris), CA No. 79-2470 USCA D.C. Ct. (Sec. Schweiker 1981, unpublished),

Mazaleski v. Schweiker et al., No. 81-1542, U.S. Supreme Court, October Term, 1981.

This case boils down to simple facts and strict Constitutional law and guarantees as cited herein with specific emphasis and attention to the right to free speech, privacy, due process, and equal protection along with Civil Rights guarantees. The facts are that appellant in 1974 and 1975 went public to members of Congress and *New York Times*, January 27, 1975, over [4] the National Institute for Occupational Safety and Health (NIOSH), Public Health Service, DHEW's downplaying cancer-causing chemicals and other dangerous chemicals at the expense of public health and safety. NIOSH developed standards on chemicals nationwide, with 90,000,000 Americans having a vested interest, including proper and expeditious incorporation of the OSHA Act of 1970 as mandated by Congress. NIOSH was highly mismanaged, wasteful, failed to properly and timely protect the public health and safety, along with extensive contract waste and fraud. Appellant went public, there was no grievance procedure, due process, equal protection, or free speech rights for appellant Mazaleski, a "*Commissioned Officer*, U.S. Public Health Service," doing same or similar work as Civil Servants, in NIOSH, who had Constitutional and Civil Rights. Appellant was fired. A Civil Servant coworker under the same supervisor, Jon R. May, treated with the same type reprisal and intimidation was not fired because of Constitutional and Civil Service protection. Appellee May followed appellant after the firing in July 10, 1975, as indicated in the prima facia documents before this Court, the Mazaleski to Congressman Flood packet cover letter dated March 25, 1976 (App. 5, pp. 413–448). Appellee's reprisal was malicious, in reprisal for going public on

matters of major public concern, health and safety, placed appellant on the "enemies list" and for almost two years appellant, with a family of six to feed and shelter, was smeared and blacklisted. Appellant was finally able to find a lower rated job, temporary due to appellee's reprisal at EPA, and the duress, including improper electronic surveillance placed under national security [5] illegally placed on appellant by EPA and the Justice Department immediately following the *Washington Weekly*, February 27, 1979, news story on the *Mazaleski v. Califano*, 75-2251, Class Action case for Commissioned Officers. Appellee May came to EPA immediately, was seen March 2, 1979, personally by appellant, and on March 6, 1979 and on various other times in April, 1979, as reported to FBI Agent Stephen K. Yates, electronic surveillance had been initiated at EPA. Later the FBI initiated their own electronic surveillance and possibly physical surveillance illegally placed under *national security* by probably the President, Mr. Jimmy Carter, Vice President Mondale, and U.S. Attorney General Benjamin Civiletti. The White House was paranoid about Senator Kennedy winning the Democratic nomination for President over Mr. Carter, Senator Kennedy's letter to appellant dated June 20, 1975 is prima facia evidence that appellant Mazaleski was doing an outstanding job at NIOSH, was helping with federal employee legislation for Constitutional rights of free speech, due process, and equal protection which U.S. Commissioned Officers did not have, but needed to faithfully discharge their oath of office, do their job, and fully and timely implement their part of the OSHA Act of 1970, a mandate of Congress. The Senator Kennedy letter to appellant Dr. Mazaleski is before this Court as prima facia evidence on appellant's 1st, 5th, 8th, and 14th Amendment Claims (App. 2, p. 165). Also, the

Washington Weekly, February 27, 1979, news story, the subject of this litigation, is believed to have caused an overreaction and rage within the Carter White House, because of the appearance of appellant on the front page with "*KHOMEINI*". The Class Action litigation front page story was an [6] embarrassment to President Carter, Mrs. Carter, Mr. Mondale, but when the data is finally obtained from the Justice Department and FBI on appellant's electronics surveillance and national security issue, including the FBI pickoff of telegrams by appellant to the head of his Church, Pope John Paul II, while the Pope was with Mr. Carter and Mr. Mondale in the White House, it will be demonstrated that there was an "*OUTRAGE*" and a "*VENDETTA*" was initiated with malice, at the highest levels of government to destroy appellant's reputation, livelihood, marriage, job, and profession. At the present time, appellant is being subjected to the most inhumane and unconstitutional techniques to drive appellant from government service, and insure that appellant never gets another job again, ultimately destroying appellant and his family, and denying basic guaranteed liberty and property rights guaranteed under the U.S. Constitution. Appellant is a native born citizen, a volunteer U.S. Navy Korean Veteran, who served with HONOR, holds a good conduct medal, and earned a B.S. (University of Scranton), M.S. Equivalent, 27 hrs. (U. Texas), MSSPH (University of Oklahoma), Ph.D. Preventive Medicine & Public Health (University of Oklahoma 1968), Elected to Sigma Xi and New York Academy of Sciences. Appellant is a dedicated public servant, had nothing to do with the placement of Khomeini's picture on the front page of the *Washington Weekly*, February 27, 1979, with appellant's picture and litigation vs. Secretary Califano, and does not warrant the dirty tricks, oppression and persecution appellant is

receiving at the hands of the government he dearly loves, and places his oath to God and Country above all things. Appellant came through the ranks as a farm boy and enlisted man, got his education the hard way, and has the greatest respect for [7] an equitable and just judicial, executive, and legislative system, but from what appellant has experienced, appellant is determined to see the system work, and that the U.S. Constitution is not subverted, as it is being done in appellant's litigations, and as is being done with this litigation at bar. Appellant will leave no stone unturned, will go to the highest levels of government, and will use every legitimate means to get restitution and redress requested and deserved.

In regard to the legal matters in this case at bar, *Barr v. Matteo*, 79 S. Ct. 1335 (1959), is repeatedly miscast and improperly applied arbitrarily and capriciously in a most injurious manner, in error, with irreparable damage, and ignores the Constitutional safeguards of appellant, clearly established at trial, 1st and 4th Amendment rights found in the TRANSCRIPT of the Trial before Judge Young, October 29, 1980 (App. 1 pp. 1-155), and in App. 2, 156-239, App. 3, 240-353, App. 4, 354-412, and App. 5, pp. 413-448 (reprisal by DHEW after firing in 1975, and falsification of appellant's personnel records).

A major issue in this case at bar is that appellant, a citizen, had not worked for NIOSH or appellee May since 1975. As of today, that's a period of seven years. Appellant did not work for NIOSH, PHS, or DHEW (now DHHS) for approximately four years, had already established 1st Amendment Free Speech Claim in *Mazaleski v. Truesdell, et al.*, CA 75-1817, D.C. Cir., 562 F.2d 701 (1977), against NIOSH, and as a citizen and

scientist, familiar with NIOSH continued mismanagement, waste and fraud, and responsible for getting GAO to investigate NIOSH and OSHA [8] which resulted in a highly negative evaluation of NIOSH and OSHA for mismanagement, waste, etc., pursuant to the GAO Report of May 10, 1977, HRD-77-71 (App. 3, pp. 240-353). Appellant was directly responsible for getting that investigation and resultant GAO Report, had prima facia evidence of obstruction of justice and perjury in *Mazaleski v. Truesdell, et al.*, No. 75-1817, USCA D.C. Ct. (1977), 1st Amendment Claim against NIOSH, and in *Mazaleski v. Califano, Sec. DHEW*, No. 75-2251, 14th Amendment Equal Protection Claim. This prima facia evidence, given to Assistant U.S. Attorney John A. Terry and Deputy Clerk Daniel M. Cathey, is believed to have been withheld from the Judges. They were documents showing obstruction of justice and perjury in 75-1817, the case where appellee May was a defendant and principal. Nothing was ever done to Mr. Cathey, Clerk's Office, USCA, D.C. Ct., nor to Mr. Terry, Assistant U.S. Attorney. In fact, Mr. John A. Terry, Assistant U.S. Attorney in 75-1817 and 75-2251, 79-2470, all involving perjury and obstruction of justice, has been nominated, as one of three sent to the White House by the D.C. Commission, to fill the seat (judgeship) on the D.C. Court of Appeals, the city's highest court. Appellant considers this additional political corruption, and an award for the Assistant U.S. Attorney's work with U.S. Attorney Charles C. F. Ruff in said cases, and with Timothy White, DHEW, DHHS lawyer with Liz Trimble in their work on *Mazaleski v. May*, 80-1843 (CA Y-80-811), which also has perjury and obstruction of justice by appellee. Will the arrogant injustice ever stop in cases at bar? Liz Trimble worked closely with U.S. Attorney Russell Baker and U.S. Attorney General

"Baltimore Ben" [9] Civiletti, the man believed to have been responsible through President Carter for illegally ordering the electronic surveillance of appellant, placing it under *national security*, to avoid discovery, all after the *Washington Weekly*, February 27, 1979, *Mazaleski v. Califano* Class Action case was published and circulated publicly.

Since appellant was a citizen, not working for NIOSH for some four years, was not supervised by appellee May for some four years, there is no way the lower Court or this Court could deny appellant the punative and compensatory damages demanded for libel and slander, or to constitutionally use *Barr v. Matteo*, 79 S. Ct. 1335 (1959), to deny appellant those damages, since *Barr v. Matteo* does not concern itself, nor is effective against Constitutional claims as in *Mazaleski v. Truesdell*, 75-1817 (1977), and a citizen's right to free speech, especially as a scientist concerned with the public health and safety. The record shows that this Court and the lower Court ruled in favor of appellee, not for his merits, but for political reasons herein described, which is clearly unconstitutional and malicious. This Court's decision of February 3, 1982 must be reversed in favor of appellant, and *all* federal employees, because this Court's decision absolutely denies appellant and all federal workers, past, present, and future Constitutional safeguards and guaranteed free speech, privacy, due process, freedom from duress, cruel and unusual punishment, and equal protection and also denies them their Civil Rights, and property and liberty rights guaranteed under the U.S. Constitution. *Barr v. Matteo*, 79 S. Ct. 1335 (1959), demands good faith; there was none on the part of appellee, only perjury and obstruction of justice as the record indicates. This Court also arbitrarily [10] and capriciously defined the outer perimeter of scope of duty

which a perjurer said he had, along with the Agency Director, Dr. Robbins, who admitted that appellee, under oath stated "He [Dr. May] is not directly under my supervision. He is part of the Institute, and in one capacity is a Special Assistant [to] me now, but not under my supervision." (App. 1, p. 130). *Barr v. Matteo*, even if applicable, mandates that the Head of the Agency make press releases of the nature as in the *Washington Weekly*, February 27, 1979, Class Action Case. Appellee May never had that authority, it was fabricated in collusion with Dr. Robbins and others, and even if he did, the preponderance of prima facia evidence which this Court and the lower Court chose to ignore, shows him to be not credible, acting with malice, invoking the malice action in *Butz v. Economou*, 438 U.S. 478 (1978), with qualified immunity instead of absolute immunity this Court has given appellee in its Opinion, February 3, 1982, so improper and so inconsistent with appellant's Constitutional guarantees. Appellant finds that *Barr v. Matteo* (1959) is an improper standard in this case at bar, that it conflicts with appellant's Constitutionally guaranteed 1st, 4th, 5th, 6th, 8th, and 14th Amendment rights, and that appellant seeks a more appropriate standard in *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388, 29 L. Ed. 2d 619, 91 S. Ct. 1999 (1971). The Supreme Court, in *Butz v. Economou*, 438 U.S. 478 (1978) stated:

> (1c) As we have said, the decision in *Bivens, supra*, established that a citizen suffering a compensable injury to a constitutionally protected interest could invoke the general federal question jurisdiction of the district courts to obtain an award of monetary damages against the responsible [11] federal official. As Mr. Justice Harlan, concurring, pointed

out, the action for damages recognized in *Bivens* could be a vital means of providing redress for persons whose constitutional rights have been violated. The barrier of sovereign immunity is frequently impenetrable. Injunctive or declaratory relief is useless to a person who has already been injured. . . .

Furthermore, the Supreme Court stated:

The extension of absolute immunity from damages liability to all federal executive officials would seriously erode the protection provided by basic constitutional guarantees. The broad authority possessed by these officials enables them to direct their subordinates to undertake a wide range of projects—including some which may infringe such important personal interests as liberty, property and free speech. It makes little sense to hold that a Government agent is liable for warrantless and forcible entry into a citizen's house in pursuit of evidence, but that an official of higher rank who actually orders such a burglary is immune simply because of his greater authority. Indeed, the greater the power of such officials affords a greater potential for a regime of lawless conduct. Extensive Government operations offer opportunities for unconstitutional action on a massive scale. In situations of abuse, an action for damages against the responsible official can be an important means of vindicating constitutional guarantees.

(8) Our system of jurisprudence rests on the assumption that all individuals, whatever their position in government, are subject to federal law: "No man in this country is above the law. No officer of the law may set that at defiance with impunity. All officers of the government, from the highest to the least, are creatures of law, and are bound to obey it."

". . . Similarly, where this Court has interpreted 42 U.S.C. § 1983 (42 U.S.C.S. § 1983) in light of common-law doctrines of official immunity, again only judges and prosecutors are accorded absolute immunity. See *Pierson v. Ray*, 386 U.S. 547, 18 L. Ed. 2d 288, 87 S. Ct. 1213 (1967); *Stump v. Sparkman*, No. 76-1750, O.T. 1977; *Imbler v. Pachtman*, 424 U.S. 409, 47 L. Ed. 2d 128, 96 S. Ct. 984 (1976). . . ."

Based on the foregoing presentation by appellant, the two page *per curiam* Opinion of this Court dated February 3, 1982 (appellant was granted an extension of time on February 22, 1982, due to extraordinary circumstances to file [12] petition for rehearing and suggestion for rehearing *en banc* to March 14, 1982), has no basis for affirming ". . . the judgment in favor of Dr. May . . ." nor is there a basis in fact or law pertinent to the material facts of this case, law and the merits, to enable this Court in its Opinion to agree, unless it's on an arbitrary and capricious basis, a nullity, that the Court incorrectly ". . . found Dr. May entitled to absolute immunity of *Barr v. Matteo*, 360 U.S. 564 (1959). We agree. . . ."

Appellant asserts that his constitutional guarantees, well documented in the Courts before 1979, especially the 1st Amendment free speech and 14th Amendment Equal Protection with Due Process Clause, and appellant's right to free speech, to speak out as he did in the *Washington Weekly*, February 27, 1979, to protect the public health and safety overwhelms and negates *Barr v. Matteo* (1959) and any absolute immunity this Court improperly awarded, since *Barr v. Matteo* (1959) does not deal with constitutional guarantees such as appellant has; therefore, it is illegal to affirm the judgment of the district court, which also made the same errors of fact

and law. If this Court was so sure of its position, it would have allowed oral argument; it did not. Appellant asks this Court to reverse its Opinion dated February 3, 1982, rule in favor of appellant, grant full redress as previously asked and award appellant the two million dollars for compensatory and punitive damages. There is a likelihood that the moving party, appellant, will prevail on the merits since the U.S. Court of Appeals for the District of Columbia already recognized a meritorious claim of free speech in *Mazaleski v. Truesdell et al.*, CA 75-1817, D.C. Cir., 562 F.2d 701 (1977).

[13] That the prospect of irreparable injury to the moving party, appellant, if relief is withheld, is herein established above in that the Free Speech and Privacy rights guaranteed by the U.S. Constitution will be decimated—irreparable injury for all time for appellant and millions of federal employees so affected. That there is no possibility of harm to other parties if relief is granted since Constitutional guarantees, especially free speech and privacy can do nothing but good, are Constitutional Rights for citizens, that even the government cannot deny. It is the law of the land, the will of the people, for all citizens, regardless of their work, creed, occupation, and status. It is in the public good.

That, if any procedural errors that may have been made by appellant *pro se* are respectfully requested to be waived, while appellant represents his Constitutional and Civil Rights *pro se*, a condition beyond his control. This day of our Lord, Friday, March 12, 1982.

/s/ Stanley C. Mazaleski, Ph.D.
Pro Se
583 Sugarloaf Drive

Monrovia, Maryland 21770
(301) 831-9424

[SEAL]
/s/ Joan M. Harris
My commission expires July 1, 1982

CERTIFICATE OF SERVICE AND NOTICE OF SERVICE

I, Stanley C. Mazaleski, certify that the original and 14 copies of this Petition for Rehearing and Suggestion for Rehearing *En Banc* dated March 12, 1982 was hand delivered to the Clerk, Clerk's Office, U.S. Court of Appeals for the Fourth Circuit, and two copies of said Petition was sent via first class mail, postage prepaid to Elizabeth Trimble, Esq., Assistant U.S. Attorney, U.S. Courthouse—8th Cloor, 101 W. Lombard St., Baltimore, Md. 21001.

/s/ Stanley C. Mazaleski, Ph.D.
Pro Se
583 Sugarloaf Drive
Monrovia, Md. 21770
(301) 831-9424

March 12, 1982

APPENDIX G

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 80-1843

[Filed: April 14, 1982]

STANLEY C. MAZALESKI,
Appellant,

v.

JON R. MAY,
Appellee.

ORDER

Upon consideration of the appellant's pro se petition for rehearing and suggestion for rehearing en banc, and no judge having requested a poll on the suggestion for rehearing en banc,

It is ADJUDGED and ORDERED that the petition for rehearing is denied.

Entered at the direction of Judge Phillips for a panel consisting of Judge Widener, Judge Phillips, and Judge Sprouse.

For the Court,

/s/ William K. Slate, II
Clerk

APPENDIX H

May 10, 1982

William K. Slate, II
Clerk
Clerk's Office
U.S. Court of Appeals
for the Fourth Circuit
U.S. Courthouse
Tenth & Main Streets
Richmond, Virginia 23219

Re: *Mazaleski v. May*, No. 80-1843, Petition for Rehearing and Suggestion for Rehearing En Banc, filed March 12, 1982, USCA 4th Circuit

Dear Mr. Slate:

On March 12, 1982 my Petition for Rehearing and Suggestion for Rehearing En Banc was filed in person as requested in your Court.

On April 14, 1982 you filed an Order in 80-1843 (enclosure) which stated "It is ADJUDGED and ORDERED that the petition for rehearing is denied."

Nothing is shown, stated, or filed which shows that the *Suggestion* for Rehearing En Banc (before the full 4th Circuit USCA Judges) was considered. The April 14, 1982 Order you filed in case at bar does not show that the *full Court* saw, reviewed, or acted upon, or ultimately denied the Suggestion for Rehearing En Banc I filed with your Court in person March 12, 1982.

The Order you filed April 14, 1982 in 80-1843 denying Petition for *Rehearing*, but very unclear and showing, stating nothing on *Suggestion for Rehearing En Banc* being denied, is ambiguous to me, and the Order of April 14, 1982 (enclosure) raised the question that the *full Court* may not have even seen the 15 page Petition for Rehearing and Suggestion for Rehearing En Banc filed March 12, 1982. *I still have serious doubts that they did,*

since there is no order clearly showing this, nor is there one filed.

On April 19, 1982 I called your Court, asked for you. Mrs. Belton said you and Mrs. McCulloch were at a meeting; she took my name, telephone number, and said I'd be called. On April 20, 1982, I called your Court; Mrs. Neil first took the call, referred me to Mr. Layne, who became adamant when asked if the April 14, 1982 Order you filed included the Order denying the Suggestion for Rehearing En Banc. *Mr. Layne said it did. I don't believe it does,* and made this clear to him, especially the ambiguity. He also said I have 90 days from date of Order to file with U.S. Supreme Court.

Since your Order filed April 14, 1982 showing only ". . . petition for rehearing is denied," and no Order showing "Suggestion for Rehearing En Banc" clearly stated, or filed, I respectfully ask that you certify, and give me a notarized statement within ten (10) days that all the Court Judges reviewed, saw the March 12, 1982 15 page *Petition* and that the Suggestion for Rehearing En Banc filed by me personally with your Court was indeed denied. I see no clear evidence of this.

Sincerely,

/s/ Stanley C. Mazaleski
Pro Se

Enc: Copy, April 14,
1982 Order

APPENDIX I

Clerk's Office
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
United States Courthouse
Tenth & Main Streets
Richmond, Virginia 23219-3599

May 19, 1982

Mr. Stanley C. Mazaleski
583 Sugarloaf Drive
Monrovia, MD 21770

Re: 80-1843, *Stanley C. Mazaleski vs. Jon R. May*

Dear Mr. Mazaleski:

In response to your letter of May 10, 1982, your pro se petition for rehearing and suggestion for rehearing en banc was transmitted to all circuit judges of this court after its filing on March 12, 1982. It is clear from the court's order of April 14, 1982 that the court acted on your suggestion for rehearing en banc because the order reads "no judge having requested a poll on the suggestion for rehearing en banc . . . ."

You should understand that a circuit court grants or denies a party's petition for rehearing, but a request for a poll of the judges for rehearing en banc must be initiated by one of the members of the court. A party can do no more than make the suggestion. No judge asked for a poll in your appeal.

I hope that this information answers your questions concerning this court's order of April 14, 1982. If I may be of further assistance, please do not hesitate to contact me.

Sincerely yours,

WILLIAM K. SLATE, II

By /s/ Scott A. Richie
Deputy Clerk

SAR: jeh

cc: Elizabeth H. Trimble, Esq.
U.S. Courthouse, 8th Fl.
101 W. Lombard Street
Baltimore, MD 21201

APPENDIX J

July 6, 1982

William K. Slate, II, Clerk
Clerk's Office
U.S. Court of Appeals
for the Fourth Circuit
Tenth & Main Streets
Richmond, Virginia 23219

Re: *Mazaleski v. May*, No. 80-1843, Petition for Rehearing, and Suggestion for Rehearing En Banc, filed March 12, 1982, USCA 4th Circuit; and letter from Scott A. Richie, Deputy Clerk, to Stanley C. Mazaleski dated May 19, 1982 (cc: Elizabeth Trimble)

Dear Mr. Slate:

On May 10, 1982 I wrote you a letter with a concern that a full panel of Judges from your Court did not act on, nor order a denial of my Petition for Suggestion for Rehearing En Banc since only an *order* denying my Petition for Rehearing was issued April 14, 1982 by your Court.

On May 19, 1982 Scott A. Richie, Deputy Clerk, your Court responded to my May 10, 1982 letter to you. I have enclosed a copy of Scott A. Richie's May 19, 1982 response since I still feel that my question on the Suggestion for Rehearing En Banc was not answered correctly by Mr. Richie, on May 1982 in 80-1843.

Mr. Richie stated in his letter of May 19, 1982 (enclosure) ". . . It is clear from the court's order of April 14, 1982 that the court acted on your suggestion for rehearing en banc because the order reads 'no judge having requested a poll on the suggestion for rehearing en banc . . . .'"

Mr. Richie further stated in paragraph two ". . . No judge asked for a poll in your appeal."

What these statements mean in the main is that no *judge acted.* The Suggestion for Rehearing En Banc could *not have been denied* since no action was taken. This is a political case, it's obvious that no judge would take action against a Southern President, President Carter, since it's a Virginia Circuit Court, so no Order either denying or affirming the Suggestion for Rehearing En Banc was taken, and I believe *that if there was to be any Due Process in adjudicating* this Free Speech 1st Amendment and Right to Privacy, 4th Amendment case action, an Order either denying or affirming Suggestion for Rehearing En Banc would have been taken.

Neither was done, I think that one or the other should have, therefore I was denied Due Process and equal protection under the law by your Court. I shall now take this matter to the U.S. Supreme Court accordingly.

A copy of this letter is being mailed today first class mail, postage prepaid, to Elizabeth Trimble, Assistant U.S. Attorney, U.S. Courthouse, 8th Fl., 101 W. Lombard Street, Baltimore, Maryland 21201.

With best wishes, I am

Sincerely yours,

/s/ Stanley C. Mazaleski
Pro Se

cc: Ms. Elizabeth Trimble

Enc.: Richie to Mazaleski
May 19, 1982 letter
